

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,) CASE NO. 4:14-CR-023-A
Government,)
VERSUS) FORT WORTH, TEXAS
CHRISTOPHER ROBERT WEAST,) JULY 25, 2014
Defendant.) 11:08 A.M.

VOLUME 9 OF 16
TRANSCRIPT OF PRETRIAL HEARING
BEFORE THE HONORABLE JOHN MCBRYDE
UNITED STATES DISTRICT COURT JUDGE

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9 Proceedings reported by mechanical stenography, transcript
10 produced by computer.

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P R O C E E D I N G S

July 25, 2014 - 11:08 a.m.

(Defendant Weast present via video conference)

COURT SECURITY OFFICER: All rise.

Hear ye, hear ye, hear ye, the United States District Court for the Northern District of Texas at Fort Worth is now in session, the Honorable John McBryde presiding.

Let us pray. God bless these United States and this Honorable Court.

Please be seated.

THE COURT: Good morning.

ALL PRESENT: Morning.

THE COURT: Okay. We're here on Number 4:14-CR-023-A. It's United States of America versus Christopher Robert Weast.

Ms. Saleem is here for the government.

And who is this you have with you?

MS. SALEEM: Your Honor, I have co-counsel, Dan Cole.

THE COURT: Okay.

MR. COLE: Morning.

THE COURT: Let's see. I got an entry of appearance, I believe this morning, from Mr. Cole.

MR. COLE: Yes, Your Honor. That's correct.

THE COURT: Okay. And then Ms. Saad's here for the

1 defendant, along with Mr. Curtis.

2 MS. SAAD: Yes, Your Honor.

3 MR. CURTIS: Yes, Your Honor.

4 THE COURT: Okay. Now, my understanding is that the
5 defendant is in the conference room on the third floor, and
6 that he has audio access to the courtroom where he can hear
7 what's going on, and will have visual access to the witness
8 stand, if anybody testifies.

9 And do you have a clerk or somebody in the room with
10 the defendant?

11 MS. SAAD: Yes, Your Honor. We do have one of our
12 staff with him, communicating with us via this computer at
13 this time.

14 Mr. Weast has indicated that he --

15 THE COURT: What's his name?

16 MS. SAAD: Oh, her name is Patricia Tovar.

17 THE COURT: Patricia what?

18 MS. SAAD: Tovar, T-O-V-A-R.

19 THE COURT: Ms. Tovar, can you hear us?

20 MR. CURTIS: She's typing right now, Your Honor.

21 She responded and said, his name is not Mr. Weast.

22 THE COURT: She said what?

23 MS. SAAD: She's communicating Mr. Weast's
24 communications that he is not Mr. Weast, and that I am not
25 his -- I, meaning Ms. Saad, am not his attorney.

1 *THE COURT:* Okay. For the record, the people in the
2 third floor conference room, including Ms. Tovar, can
3 communicate with defense counsel over a computer, an internet
4 computer set up.

5 And that, what you're telling me now, Ms. Saad, is
6 what you -- the communication you received from the third
7 floor?

8 *MS. SAAD:* That's correct, Your Honor.

9 *THE COURT:* And I take it that she also indicated
10 that they can hear us here?

11 *MR. CURTIS:* I'm not sure she's having time to
12 communicate that to us, Your Honor. She's typing quite a bit
13 of information -- I'm sorry, Your Honor. I apologize.

14 She's typing quite a bit of information that
15 Mr. Weast wants us to tell you. She just communicated that,
16 yes, we can hear you, so the record should reflect they can
17 hear us, Your Honor.

18 *THE COURT:* Okay. Ms. Tovar, can you and Mr. Weast
19 see the witness box from where you are?

20 *MR. CURTIS:* She's typing, Your Honor.

21 *MS. SAAD:* Yes, Your Honor. She says, yes.

22 *THE COURT:* Okay. Very good.

23 We have two matters scheduled for hearing.

24 One is the motion of the defendant to supplement the
25 defendant's exhibit list by the designation of an expert by

1 the name of Bill McGregor.

2 And the other is a motion by the government to
3 supplement its witness and exhibit list by adding as a witness
4 FBI Special Agent James Wines, and as an exhibit, a copy, a
5 redacted copy -- maybe two exhibits, the actual birth
6 certificate of one of the persons the government says is
7 depicted on some of the images that are alleged in Count 1 and
8 a redacted copy.

9 Do you have both on the exhibit list?

10 *MS. SALEEM:* Your Honor, we are only offering the
11 redacted copy, but we are making the original available
12 for -- or we've made or are making the original available for
13 inspection today, in the event that the question regarding the
14 admissibility of the redacted copy has to go to the
15 redactions.

16 *THE COURT:* Okay. Now, I received a second motion
17 by the government to amend the witness and exhibit list, and
18 all it has to do with is the change of the identity of a
19 records custodian.

20 Am I correct on that?

21 *MS. SALEEM:* That's correct, Your Honor.

22 *THE COURT:* I take it there's no objection to that?

23 *MS. SAAD:* No, Your Honor. No objections to that.

24 And, Your Honor --

25 *THE COURT:* And the only change in the exhibit list

1 suggested by that was to add, on the exhibit list, that the
2 new custodian would be the person -- a person to offer that
3 exhibit.

4 Okay. Go ahead. Did you have something you wanted
5 to say?

6 MS. SAAD: Your Honor, I just wanted to ensure the
7 communications I'm receiving are just on the record: That
8 Mr. Weast wants to proceed pro se, and that he's questioning
9 the jurisdiction of the court. And so I just wanted to make
10 sure that that objection is noted, and we can proceed.

11 THE COURT: Okay. That's fine. You have conveyed
12 his objection.

13 MS. SAAD: Thank you, Your Honor.

14 THE COURT: Okay. You may proceed. We'll go
15 forward with the defendant's motion first. That was the first
16 one filed, so you may proceed, Ms. Saad.

17 MR. CURTIS: Thank you, Your Honor.

18 THE COURT: Are you taking the laboring oar on this,
19 Mr. Curtis?

20 MR. CURTIS: Yes, sir, I am, Your Honor.

21 THE COURT: You may proceed.

22 MR. CURTIS: Thank you. Your Honor, the defense
23 calls Bill McGregor.

24 THE COURT: Okay. Come forward. Raise your right
25 hand to be sworn.

1 (Witness sworn)

2 THE COURT: Okay. Come up and be seated. The
3 witness stand is over here.

4 Okay. You may proceed, Mr. Curtis.

5 MR. CURTIS: Thank you, Your Honor.

6 JAMES WILLIAM MCGREGOR,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. CURTIS:

10 Q. Mr. McGregor, would you state your full name, please.

11 A. James William McGregor.

12 Q. And how are you employed, Mr. McGregor?

13 A. Through E-Investigations.

14 Q. And would you spell that for the court reporter,
15 please.

16 A. E, investigations, I-N-V-E-S-T-I-G-A-T-I-O-N-S.

17 Q. Caught you offguard. It's all one word, correct?

18 A. We space it, but there's -- there's -- it's --

19 Q. All right. And do you go by Bill?

20 A. Yes, sir.

21 THE COURT: Is that your company or --

22 THE WITNESS: No, sir.

23 THE COURT: Okay.

24 Q (BY MR. CURTIS) Is it -- is E-Investigations a forensic
25 specialist company?

1 A. Yes, sir.

2 Q. All right. And are you a digital forensic
3 specialist?

4 A. Pretty much anything with a storage device, sir.

5 Q. When you say, "a storage device", are you -- is one
6 of your key areas of expertise forensic imaging and storage of
7 those images on digital devices, including computers, mobile
8 devices, and video devices?

9 A. Yes, sir.

10 Q. Okay. I'd ask you to look at what's in front of you
11 and marked as pretrial -- Defendant's Pretrial Exhibit Number
12 1. Do you see that?

13 A. Yes, sir.

14 Q. And what is that?

15 A. It's my CV.

16 MR. CURTIS: Your Honor, at this time I'd offer into
17 evidence Defendant's Pretrial Hearing Exhibit Number 1.

18 THE COURT: It's received.

19 MR. CURTIS: Thank you, Your Honor.

20 Q (BY MR. CURTIS) Now, are images that are transferred on
21 the internet, downloaded through the internet, are they
22 actually digitally-stored data?

23 A. Yes, sir.

24 Q. And that's whether it's a photograph or a video, it's
25 digitally-stored data?

1 A. Yes, sir.

2 Q. And what does that mean, exactly?

3 A. Pretty much anything on the computer or mobile
4 devices, ones and zeros. Everything breaks down to computer
5 language, even pictures that you see.

6 Q. Would you briefly tell the Court your training and
7 experience and education that you have that qualifies you as
8 an expert in the area of forensic image storing?

9 A. I have an associate's in computers. I have a
10 bachelor's in computers.

11 THE COURT: Where is your associate's from?

12 THE WITNESS: Sir, it's from the Air Force,
13 actually, out of a community college of the Air Force.

14 THE COURT: You did what?

15 THE WITNESS: Community college of the Air Force,
16 sir.

17 THE COURT: What community -- you mean the Air Force
18 has a community college?

19 THE WITNESS: Yes, sir. We're the only branch of
20 the military with a college.

21 THE COURT: Where do you attend school when you take
22 that?

23 THE WITNESS: We actually go to training in school
24 in the military.

25 THE COURT: You don't have a classroom, you --

1 THE WITNESS: Yes, we --

2 THE COURT: -- just do it over the computer?

3 THE WITNESS: No, it was a classroom. Biloxi,
4 Mississippi is where I actually trained for computers.

5 THE COURT: How long a -- how long of a course is
6 that?

7 THE WITNESS: That was about four months for my
8 computer course.

9 THE COURT: How many hours a day?

10 THE WITNESS: All day, sir, 8 hours, normally, a
11 day.

12 THE COURT: Go ahead. Where is your bachelor's
13 degree from?

14 THE WITNESS: From Bellevue University, which is
15 outside of Offutt Air Force Base.

16 THE COURT: Is that also through the Air Force?

17 THE WITNESS: No. That's its own private college.

18 THE COURT: And what -- is that a one-year course or
19 what?

20 THE WITNESS: After I got my associate's through the
21 Air Force, I transferred my credits and then finished my
22 bachelor's there, so I took two years or so there.

23 THE COURT: Okay. Very good.

24 You may proceed.

25 MR. CURTIS: Thank you, Your Honor.

1 Q (BY MR. CURTIS) Mr. McGregor, are you working on your
2 master's?

3 A. Yes, sir. I'm approximately four classes short of my
4 Master's in Management Information Science with a minor in
5 digital forensics from the same school.

6 Q. All right. And digital forensics will -- that's a
7 term that covers the testimony that I'm hoping that we can get
8 into court through you, that we've discussed before trial
9 today, correct?

10 A. Correct.

11 Q. Digital forensics would be a general term that covers
12 that area?

13 A. Yes, sir.

14 Q. Okay. Speaking of that, you've been employed to
15 testify regarding two general areas in the trial of this case,
16 which starts next Monday.

17 The first one is that computers are susceptible to
18 remote access and hacking via the internet, via wireless
19 routers, via access by other individuals, and via other means.

20 The second general area we're asking you to testify
21 about is whether it's possible for someone to look at a
22 certain visual depiction, whether it's a photo or a video, and
23 determine that it's an actual minor or not, whether that's
24 possible to do that.

25 Are you qualified to testify as an expert on those

1 two questions?

2 A. Yes, sir.

3 Q. And tell the Judge, I think you probably covered this
4 with your CV and your testimony a minute ago, but what else
5 qualifies you to testify as an expert in that area?

6 A. Other than my forensic background and forensic
7 training, I've had a little more than 15 years of IT training
8 through military, government, and through school, as well as
9 my jobs in the government, through the military and the
10 government, and private sector.

11 Q. When you were with the government, you were with the
12 Air Force, correct?

13 A. I went Air Force, and then DOD Air Force, and then I
14 went private sector with SAIC working with the military. I
15 spent four years in Iraq/Afghanistan embedded with the
16 military for IT stuff.

17 Q. And so the work you did while you were with the
18 military and the government was with computers?

19 A. All-encompassing, yes. We did databases over there
20 and pretty much everything down to if your mouse was broken or
21 something, because obviously being short-manned over there,
22 everybody did everything.

23 Q. Okay. And you have -- during that time, you had both
24 secret clearance and top secret clearance, correct?

25 A. Yes, sir. I started off with TS/SCI clearance, and

1 then as I moved towards the private sector, I got away from
2 it. It was demoted to a secret, and now I'm without.

3 Q. Now, what is your opinion regarding the -- whether a
4 computer, a home computer in particular, such as a laptop or a
5 tower, is susceptible to hacking or remote access?

6 A. In my opinion, anything that is on the internet is
7 susceptible to hacking. It's just a matter of time and
8 opportunity.

9 Q. Okay. I'd ask you to look at Defendant's Exhibit
10 Number 3, I believe. It's in front of you. Is that an
11 e-mail?

12 A. Yes, sir.

13 Q. And does it contain information that Ms. Saad and I
14 passed on to you, that came from the government's expert,
15 regarding a virus scan on the computer in question in this
16 case?

17 A. Yes, sir.

18 Q. All right. And does -- and did you review the
19 results of that virus scan done by the government expert?

20 A. Yes.

21 Q. Okay. Do you have an opinion as to whether the
22 computer in question in this case is susceptible to
23 hacking -- I'm sorry, yeah, hacking, remote access?

24 A. Based on what I got from the government with their
25 scan, there are multiple, multiple exploits that could be used

1 to gain access to the person's PC.

2 Q. And what are exploits? Explain that word.

3 A. Ways into a machine, something that somebody can use
4 to gain access or privileged access to a machine.

5 Q. All right. Now, regarding your opinion as to whether
6 a person can look at an image, whether it's a still photo or a
7 video image, and tell whether it is an actual or real minor in
8 that image, what is your opinion in that regard?

9 A. With technology the way it is today, I don't believe
10 that anybody can look at a video and state beyond a shadow of
11 a doubt that it hasn't been altered in some way.

12 Q. And is that -- would that opinion remain true for
13 images that may have been created back around 2004?

14 A. Even more so, in my opinion, because the videos back
15 then and pictures back then were more grainy, and they didn't
16 have the megapixels that they have now.

17 MR. CURTIS: Your Honor, I forgot to offer
18 Defendant's Pretrial Hearing Exhibit 3.

19 THE COURT: Okay. It's received.

20 MR. CURTIS: Thank you, Your Honor.

21 Q (BY MR. CURTIS) Would you look at Defendant's Pretrial
22 Exhibit Number 2. Is that an e-mail that contains some
23 information passed on to you from the government's expert?

24 A. Yes, sir.

25 Q. And that information is in response to our request

1 for what's call metadata or EXIF data?

2 A. Okay.

3 Q. I'm going to spell EXIF data because I was saying it
4 wrong until yesterday. It's E-X-I-F?

5 A. Correct.

6 Q. Okay. Now, tell the Judge what EXIF data or metadata
7 is.

8 A. The EXIF data is embedded data within a picture to
9 tell all of its properties, the pixel heights, the -- how many
10 megapixels it is, what was used. If you take one from a
11 camera, it will say that it was on a Canon, it will say it was
12 on an iPhone. And in this case, one of them showed that it
13 was in Photoshop at some point.

14 Q. Okay. One of the images in question showed that it
15 had been handled by Photoshop; is that correct?

16 A. Yes, sir.

17 Q. And of course -- go ahead and explain briefly what
18 Photoshop is.

19 A. Photoshop is a well-known, pretty robust program that
20 basically allows you to change images.

21 Q. Manipulate images?

22 A. Manipulate. It has a wide variety of things that you
23 can do with Photoshop. Most are geared towards changing an
24 image in some form or fashion.

25 Q. And is that digital manipulation? Is that what that

1 is?

2 A. Yes.

3 Q. Okay. And you can look at this metadata or EXIF data
4 and see if -- first, you can look to see if the original, or
5 what purports to be the original, creation of the image is in
6 there, correct?

7 A. Yes, but --

8 Q. I didn't say that right at all. Would you correct
9 how I said that?

10 A. It will give you the creation date, as well as the
11 save dates. It will also -- like I said, it will give you
12 actually what saved it. We use this a lot whenever we're
13 doing mobile devices, so you can say this image was from an
14 iPhone, it was saved at this time, and created at this time,
15 so you can say it's pretty well a real image.

16 Q. And with regard to the metadata or EXIF data, with
17 regard to the images in the indictment in the case,
18 you -- that was provided to you, by us, from the government's
19 expert, correct?

20 A. Correct.

21 Q. And for most of the images, there is no metadata or
22 EXIF data that would show the original creation; is that
23 correct?

24 A. Yes, sir.

25 Q. Okay. And their one image does have the -- show that

1 it's been handled by Photoshop?

2 A. Yes, sir.

3 Q. And you have not seen those images yet, correct?

4 A. No, sir.

5 Q. Okay. We're planning on -- hoping that you could
6 look, view those images today?

7 A. Yes.

8 Q. But that doesn't change your general opinion that you
9 just can't tell whether computer images on a computer are
10 manipulated or not?

11 A. Not in the least.

12 Q. And to be clear and be fair, you can't look at this
13 metadata and tell the Judge that they have been photoshopped
14 or manipulated, correct?

15 A. No. I could make a guess based on it, but you can't
16 be 100 percent.

17 Q. There's just no way to be sure either way, is there?

18 A. Correct.

19 THE COURT: What is there on this Exhibit 2? Are
20 you offering Exhibit 2?

21 MR. CURTIS: I am offering Exhibit 2 at this time,
22 Your Honor.

23 THE COURT: It's received.

24 What, on Exhibit 2, tells you that one of the images
25 had at some point in time been in Photoshop?

1 *THE WITNESS:* It's -- I don't know if yours is
2 printed the same way, but about three-quarters down the page,
3 sir, where it says, exclamation ten-year-old tied, if you see
4 at the end, it says, contains metadata, indicating that it was
5 handled in Photoshop. That was the, I guess, government's
6 response when we asked for it.

7 *THE COURT:* Oh, I find it. I find it. When you say
8 it was handled in Photoshop, what does that -- does that
9 necessarily mean anything?

10 *THE WITNESS:* It means that at some point in time it
11 was loaded into and saved from Photoshop, so, no, it doesn't
12 necessarily mean anything, but it could mean something, I
13 guess I should -- if I'm stating that correctly. Just by
14 loading it in there, you would have to have a reason to load
15 it in there. Photoshop is a specific program. You don't use
16 it for just viewing a picture. You would actually be doing
17 something with it in most counts.

18 *THE COURT:* Do some people store things in
19 Photoshop?

20 *THE WITNESS:* Store things? Not really, sir. Most
21 times you're using Photoshop for a specific reason.

22 *THE COURT:* Okay. Okay. Anything else, Mr. Curtis?

23 *MR. CURTIS:* Yes, Your Honor. I think I have one
24 other question.

25 *Q (BY MR. CURTIS)* I forgot to ask you, when images are

1 passed along the internet, transferred through the internet,
2 do they often lose their metadata or their EXIF data?

3 A. Yes. Not only do they lose it, sometimes that can be
4 manipulated, too. But, yeah, the more and more it's passed
5 around, the more and more things can get skewed or lost.

6 Q. Okay. And that's pretty common, correct?

7 A. Yes, sir.

8 Q. And is your opinion that nobody can really look at an
9 image that's on a computer and tell whether it's an actual
10 person or real person? Or, for that matter, is that generally
11 accepted in the computer science community? I mean, is that a
12 generally accepted idea? It's not anything earth shattering
13 or --

14 A. No, yeah, it's -- it's something -- whenever you see
15 things on the internet, a lot of times you got to take it with
16 a grain of salt because you don't know if it's real, and I
17 think that's being more and more accepted throughout. As
18 people see parodies and stuff like that, you just don't know,
19 is it real or isn't it real.

20 Q. So it's not -- it's not really some new theory, it's
21 pretty much generally accepted in your community?

22 A. Yes, and -- uh-huh, pretty much everywhere.

23 *THE COURT:* Let me interrupt a minute.

24 Looking at Exhibit 2, there's no mention of metadata
25 as to the last three images listed. As I read the exhibit,

1 there are four images listed.

2 Is that correct?

3 *THE WITNESS:* I think there's three images and a
4 movie, a clip, or -- was there another one on the other page?
5 Oh, yeah, there's three images and a clip it looks like.

6 *THE COURT:* Which one is the movie?

7 *THE WITNESS:* The one at the top that starts with
8 all exclamation points and ends in dot A-D-I.

9 *THE COURT:* Okay. The last three, then, are just
10 single images?

11 *THE WITNESS:* Yes, sir.

12 *THE COURT:* And I don't see any mention of metadata
13 in any one of those three.

14 *THE WITNESS:* The second-to-last one, sir.

15 *THE COURT:* Oh, okay. That's where you found the
16 Photoshop.

17 *THE WITNESS:* Yes, sir.

18 *THE COURT:* Was there no indication of metadata on
19 the second and final entries?

20 *THE WITNESS:* According to the government, sir, no.
21 This is what we got from them.

22 *THE COURT:* What does it mean if it doesn't have any
23 metadata?

24 *THE WITNESS:* It was probably lost along the way.
25 When people copy them back and forth and distribute them

1 around the internet, it was probably lost.

2 THE COURT: Okay. Okay. Go ahead.

3 MR. CURTIS: I think I have one more, Your Honor.

4 Q (BY MR. CURTIS) Your training and experience and the
5 work that you do now, the part -- part of your job is to
6 conduct forensic analysis regarding digital images? That's
7 part of what you do, correct?

8 A. Yes, sir.

9 Q. Okay.

10 MR. CURTIS: Pass the witness, Your Honor.

11 THE COURT: Okay. Go ahead.

12 **CROSS-EXAMINATION**

13 **BY MS. SALEEM:**

14 Q. Mr. McGregor, when you say that you are involved in
15 digital imaging, isn't that really about copying data from one
16 storage device to another storage device and then processing
17 that data?

18 A. Yes, we do that quite often also.

19 Q. Okay. And isn't that different from what's being
20 used today as far as --

21 A. Image.

22 Q. -- an image of a picture?

23 A. Yes. We use those terms differently.

24 Q. Okay. So what is your training and experience as it
25 relates to making -- rendering opinions about visual

1 depictions, as opposed to just looking at data?

2 A. As far as looking at a painting or a picture for what
3 it is, we -- I don't have, except for common knowledge of
4 Photoshop and manipulation of things like that. We never
5 look -- in the forensic world, we never look at a picture as
6 is. We look at a picture as ones and zeros, EXIF data,
7 metadata, all the SHA-1 hash values that were taken via the
8 forensic report that was done. We never look at it for face
9 value. We look at it as data.

10 Q. So your training doesn't really encompass analyzing
11 whether a visual depiction involves a real or a virtual minor?

12 A. Well, training doesn't involve image authentication,
13 no, but as far as in the IT world where we -- I mean, the
14 internet is based on pictures, based on visual stuff, so, I
15 mean, this is done all the time in the IT world where you take
16 pictures and you look at them and say, okay, well, this is
17 real, this is -- and I've -- I've actually been on other court
18 cases where we have to verify things like that.

19 So as far as do we just look at a picture, like your
20 original question, no, we don't just look at a picture, but we
21 do look at it, as well as data. So training, IT, and
22 forensic.

23 Q. Now, you understand that there is a difference, of
24 course, between morphing an image versus altering data in a
25 visual depiction; is that fair to say?

1 A. Yes.

2 Q. What is morphing?

3 A. Whenever you take something that's there and change
4 it just a little bit to something else to depict it as -- say
5 you take a young person and make them old, take an old person
6 and make them young. You still have the same general image
7 there, but you just made it a little bit different.

8 Q. And that includes -- are you familiar with composite
9 images as well?

10 A. As the term. Like I said, I'm not any kind of
11 graphics artist or image analyst.

12 Q. Okay. So you're not here to -- you're not here to
13 testify that any of the images are composite images; is that
14 correct?

15 A. No.

16 Q. Or the video is a composite video?

17 THE COURT: He just said that was not correct, so I
18 think maybe you ended up with a double negative, but do you
19 want to try again.

20 MS. SALEEM: I will clarify.

21 Q (BY MS. SALEEM) You're not testifying --

22 THE COURT: Just ask him a question and don't tell
23 him what he's not doing.

24 Q (BY MS. SALEEM) Do you have any testimony to present
25 regarding whether any of the images or videos are composite

1 images or videos?

2 A. No, ma'am.

3 Q. Do you have any testimony to present whether the
4 images or videos are morphed images or videos?

5 A. No.

6 Q. Are you -- you mentioned, current state of technology
7 is such that you can't look at an image and detect if it's a
8 real or virtual. Is that what you said earlier?

9 A. Correct.

10 Q. What technology are you referring to?

11 A. Internets, the digital age. Everything is going
12 digital now, so, I mean, it's hard to tell whether a digital
13 image is real or not.

14 *THE COURT:* Let me interrupt there just a minute.
15 Some people might be able to, don't you think?

16 *THE WITNESS:* Yes, sir. Just like the people that
17 authenticate paintings and stuff like that, there are certain
18 nuances and things like that, but on the opposite end of the
19 spectrum, there are really good people that manipulate, too.

20 *THE COURT:* Okay. Is there any study as to what
21 percentage of the people who look at the images on the
22 internet, over a computer, are able to tell whether it's a
23 real image as opposed to an altered image?

24 *THE WITNESS:* None that I know of, sir. But most of
25 the things like what you're talking about, it's based on the

1 other picture, so you would take and analyze one picture based
2 on that other picture. I think in this case we don't know
3 whether that other picture is true either.

4 *THE COURT:* Okay. But we're -- I think I'm more
5 interested in finding out if there are any studies as to what
6 percentage of the people who look at images can detect whether
7 it's altered, as opposed to a genuine real thing.

8 *THE WITNESS:* I do not know of any study, but I
9 would make an assumption based on, like I said, multiple years
10 in the IT field, that that number would be very low, based on
11 just looking at a digital photograph. When you have a
12 painting or something tangible, you can look at lines,
13 strokes, and all that kind of stuff. When it's digital on the
14 screen, none of that's there, so you have to rely on what
15 you're seeing, and it would be very, very difficult to say
16 this is that exact picture or this hasn't been manipulated at
17 all from anything else.

18 *THE COURT:* Okay. Go ahead.

19 *Q* (BY MS. SALEEM) Aside from the internet itself, what
20 other technology are you relying on to come to this
21 conclusion?

22 *A.* To the conclusion of?

23 *Q.* That no one can tell that an image is real or
24 virtual.

25 *A.* Experience. Like I said, out in the -- I mean,

1 magazines, things like that, I mean, people, whenever they
2 morph things or change things, they have to put little --
3 little notes at the bottom saying, this isn't real, this is a
4 cartoon, or this is depicted, so people don't think that it's
5 real.

6 Q. So no area of expertise on that, right?

7 A. Just experience.

8 Q. With respect to altering photos, you mentioned that
9 can be done through Photoshop; is that right?

10 A. Yes.

11 Q. Altering can refer to, what, brightening or darkening
12 pictures?

13 A. Yes.

14 Q. Enlarging a picture?

15 A. Yes.

16 Q. Cropping a photo?

17 A. Yes.

18 Q. Could it include rotating images?

19 A. Yes.

20 Q. Shortening a video?

21 A. A video or an image?

22 Q. A video.

23 A. Well, Photoshop, as the normal Photoshop, doesn't do
24 videos. It does images. There are other more standard video
25 editing tools.

1 Q. Okay. And does that all fit in with your -- your
2 opinion that images are altered, if they have been cropped or
3 enlarged or brightened?

4 A. They are altered, enhanced.

5 THE COURT: What has been your experience with child
6 pornography?

7 THE WITNESS: I've done several other cases, similar
8 to this one, where we analyzed the images, just like we are
9 here, sir.

10 THE COURT: Have you given testimony in child
11 pornography cases before?

12 THE WITNESS: Actually, no. Whenever I've done the
13 child pornography cases, I've submitted all my reports. We've
14 been the actual investigator, like what the government has
15 done. We went and investigated them, did our reports, and
16 submitted them to the judges there, and the judges accepted
17 the testimony based on submitting the CVs and submitting what
18 we wrote.

19 THE COURT: Is there any study as to how many
20 alterations there are in child pornography?

21 THE WITNESS: Not that I know of, sir.

22 THE COURT: Okay.

23 THE WITNESS: That's not something that I've
24 studied.

25 THE COURT: Okay.

1 Q (BY MS. SALEEM) Are you here to render any other
2 opinions?

3 THE COURT: Do you know anything about the child
4 pornography industry, who makes them and how they are
5 distributed or that sort of thing?

6 THE WITNESS: I know, basically, what I've came
7 across in the forensics world, the sort of underworld of
8 distribution. As far as detecting people doing it and things
9 of that nature, no, sir. We usually are in defense of and
10 we -- they have already -- the clients have already been
11 caught, and we try and validate whether those are actual child
12 porn or not, but --

13 THE COURT: Have you ever been able to actually make
14 a decision?

15 THE WITNESS: On?

16 THE COURT: Whether it's a real person.

17 THE WITNESS: No, sir.

18 THE COURT: Okay.

19 Q (BY MS. SALEEM) Are you offering any other opinions in
20 connection with this investigation or at trial?

21 A. No, ma'am.

22 MS. SALEEM: I pass the witness.

23 THE COURT: Okay. You can step down.

24 I guess you're through with him, aren't you?

25 MR. CURTIS: I had a couple of follow-up questions,

1 Your Honor.

2 *THE COURT:* Okay. Go ahead.

3 **REDIRECT EXAMINATION**

4 **BY MR. CURTIS:**

5 Q. Mr. McGregor, the most precise way to -- well, all
6 images, when they are kept on a computer, are digital data,
7 correct?

8 A. Yes, sir.

9 Q. That's what the image is, it's the digital data that
10 you study?

11 A. Yes, sir.

12 Q. And that's what you analyze?

13 A. Yes, sir.

14 Q. It's a series of zeros and ones, correct?

15 A. Yes.

16 Q. Is that the most precise way to determine whether or
17 not an image has been altered or not?

18 A. A digital image, yes.

19 Q. And even that, you just -- there's no way you can say
20 for 100 percent, one or the other?

21 A. No, because all data can be manipulated.

22 *MR. CURTIS:* Okay. I'll pass the witness, Your
23 Honor.

24 *THE COURT:* Okay. You can step down.

25 You wanted him to be excused for today?

1 MR. CURTIS: Your Honor, if the Court's approved him
2 as an expert and he's allowed to come back --

3 THE COURT: I haven't made a decision.

4 MR. CURTIS: Okay.

5 THE COURT: And I may not make a decision until
6 later on.

7 MR. CURTIS: All right. I understand.

8 THE COURT: I would suggest that both of you order
9 that transcript and be prepared to give me a brief based on
10 what you've heard today --

11 MR. CURTIS: Yes, sir.

12 THE COURT: -- early Monday morning.

13 MR. CURTIS: All right.

14 THE COURT: I assume the court reporter can do it.
15 If she can't, we'll have to make other arrangements.

16 MR. CURTIS: Yes, sir. Your Honor, otherwise, I
17 would like him to be excused, but I think he's going to
18 actually look at the images before he leaves town today, so
19 he'll be around.

20 THE COURT: Okay. Very good.

21 Okay. Is that all you have in support of your
22 expert, in support of your motion?

23 MR. CURTIS: Yes, Your Honor.

24 THE COURT: Okay. I think what I'm going to do is
25 I'm going to grant the motion authorizing you to designate

1 him.

2 MR. CURTIS: Yes, sir.

3 THE COURT: That's all you've asked for so far.

4 MR. CURTIS: Yes, sir.

5 THE COURT: But I haven't made a determination that
6 he's qualified to testify, but I'm going to let you designate
7 him, and if the decision is made that he's qualified to
8 testify, he will have been designated.

9 MR. CURTIS: Yes, Your Honor.

10 THE COURT: Isn't that all you've asked for so far?

11 MR. CURTIS: That is what we've asked for so far.

12 THE COURT: Okay. Okay. I'll do that.

13 MR. CURTIS: Thank you, Your Honor.

14 THE COURT: Okay. You may proceed with your
15 motion.

16 MS. SALEEM: Your Honor, at this time we will call
17 James Wines.

18 THE COURT: Raise your right hand to be sworn.

19 (Witness sworn)

20 THE COURT: Okay. Come up and be seated.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Okay. You may proceed.

23 MS. SALEEM: Thank you.

24 JAMES J. WINES,

25 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SALEEM:

Q. Can you go ahead and state your name for the record, please.

A. Yes. My name is James, middle initial J, Wines, W-I-N-E-S.

Q. What do you do for a living?

A. I am a special agent with the FBI.

Q. And what do you do with the FBI as a special agent?

A. I currently work child exploitation matters with the FBI, and I've been working child exploitation matters since the beginning of 2010. I'm currently the task force coordinator for the Connecticut Child Exploitation Task Force, which is run out of the New Haven Division of the FBI.

Q. How long have you been with law enforcement?

A. I have been with law enforcement for over 20 years.

Q. How long have you had opportunities to work with child exploitation investigations?

A. I have been working child exploitation investigations exclusively for the last four-and-a-half years.

Q. I'm going to direct your attention to Government's Exhibits 43, 44, and 45.

THE COURT: Are those trial exhibits?

MS. SALEEM: Yes, Your Honor.

THE COURT: In your trial exhibit book?

1 MS. SALEEM: Yes, Your Honor.

2 THE COURT: I didn't bring my trial exhibit book in.
3 I should have. Do you have one I can be looking at?

4 MS. SALEEM: Your Honor, actually, he's looked at
5 them. We could tender those because, since it's contraband,
6 we don't have copies of them. We just have the originals.

7 THE WITNESS: I could provide it to Your Honor, if
8 you'd like.

9 THE COURT: That's fine. You can go ahead and
10 testify and then I'll look.

11 THE WITNESS: Okay.

12 Q (BY MS. SALEEM) Are you familiar with Government's
13 Exhibits 43, 44 and 45?

14 A. Yes, I am.

15 Q. And just for purposes of the record, what is the file
16 name that's listed on Government's Exhibit 43?

17 A. Government's Exhibit 43 has the file name: (Pthc)
18 Tori -- T-O-R-I -- 9Yo-My Younger Sister-18.jpg.

19 THE COURT: Let me interrupt you a minute.

20 MS. SALEEM: Yes.

21 THE COURT: My exhibit book wouldn't have that in it
22 anyway, would it?

23 MS. SALEEM: Your exhibit book would only have the
24 file name, but it does not have the --

25 THE COURT: Okay. So, forget about my exhibit book.

1 I think somebody went to get it. Go ahead.

2 Q (BY MS. SALEEM) With respect to Government's Exhibit 44,
3 what is the file name of that exhibit?

4 A. The file name of that exhibit is: (Pthc) Tori --
5 T-O-R-I -- 9Yo-my_younger_sister-36.jpg.

6 Q. And then with respect to Government's Exhibit Number
7 45, what is the name of that file?

8 A. The name of that file is: ((lolitaguy)) sandra -
9 teen model nude - beach lolita preteen underage 12yo 11yo 13yo
10 14yo 10yo 9yo 8yo 7yo 6yo.jpg.

11 Q. Are you familiar with the individual what appears in
12 all three of those exhibits?

13 A. Yes, I am.

14 Q. How are you familiar with that individual?

15 A. I am familiar with this individual through my
16 participation in the investigation and prosecution of the
17 individual who produced these images.

18 Q. Now, how -- can you -- can you tell when you -- how
19 old was the person that you met who was in the pictures?

20 A. The individual that was in the pictures, I met her
21 when she was 15 years old.

22 Q. Did the person that you -- well, the person that you
23 met, did she look similar, different? How did she compare to
24 the person in the images that you just observed?

25 A. When I met her, I recognized her as a slightly older

1 child, the same child as depicted in the images.

2 Q. What were the similarities?

3 A. Similarities were how her face looked, her hair,
4 the -- I mean, everything about her. It was only -- some of
5 these images were taken in 2006. I met her in 2011.
6 She -- she had not changed much, other than normal age
7 progression.

8 Q. Now, the person that is depicted in Government's
9 Exhibits 43, 44, and 45, are they a real minor?

10 A. Yes.

11 Q. With respect to those three exhibits, are there
12 multiple people in those images, or is there just one person
13 in each exhibit?

14 A. No, there's just one, one person in each exhibit, and
15 it's the individual who I know.

16 Q. In addition to meeting this person, have you provided
17 a copy of the birth certificate of this minor?

18 A. Yes, I have.

19 Q. Now, you actually have with you a -- the original
20 certified copy of the birth certificate?

21 A. Yes, I do.

22 Q. And in addition to the original, do you have
23 Government's Exhibit 81, which is a redacted copy of the birth
24 certificate?

25 A. Yes, I do.

1 Q. I'm going to ask you to tender that 81 to the Court.

2 THE WITNESS: Here you go, Your Honor.

3 Q (BY MS. SALEEM) Are you the person who actually made the
4 redactions on Government's Exhibit 81?

5 A. Yes. I created that redacted birth certificate using
6 the original certified copy of the birth certificate, which
7 had been obtained from the Connecticut Department of Public
8 Health.

9 THE COURT: Do you have the original?

10 THE WITNESS: Yes, I do, Your Honor.

11 THE COURT: Let me see it.

12 THE WITNESS: You can see the raised seal.

13 Q (BY MS. SALEEM) And on both the original, as well as the
14 redacted copy of the birth certificate, is there a seal on
15 there that it's from a -- from a state department?

16 A. There are seals on it. On the original, there is
17 actually a raised seal, that you can actually feel, that does
18 not translate when you create the redacted copy.

19 THE COURT: Okay. I'm -- I'm looking at exhibits --
20 Government's Exhibit 73, which is the original, and it appears
21 to be properly authenticated by the Connecticut authorities.
22 And I'm looking at Exhibit 81, and it appears to be an
23 identical copy with certain things blacked out, for whatever
24 it's worth.

25 Q (BY MS. SALEEM) And just for clarification, Special

1 Agent Wines, with respect to the information that was
2 redacted, is that personal identifiers that would protect the
3 identity of the minor, who is also appearing in Government's
4 Exhibits 43, 44, and 45?

5 A. Yes. I made the redactions to protect the identity
6 of the victim.

7 MS. SALEEM: We will pass the witness.

8 THE COURT: Okay. You got any questions you want to
9 ask him?

10 MS. SAAD: Yes, Your Honor.

11 **CROSS-EXAMINATION**

12 **BY MS. SAAD:**

13 Q. Agent Wines, you are -- you testified that your
14 experience is specifically in the child exploitation division,
15 correct?

16 A. No, I said I've been doing that for the last four
17 years. I have other areas of investigative experience as
18 well.

19 Q. So, in 2011, you were just beginning your work and
20 training in the child exploitation division, approximately?

21 A. I had been working in child exploitation for about a
22 year-and-a-half when I met the victim.

23 Q. And you have received training in the child
24 exploitation -- in interviews of victims, correct?

25 A. Yes.

1 Q. And you've -- how many times have you interviewed
2 this minor you're referring to?

3 A. I never participated in a substantive interview of
4 her. The interviews of her were done by our victim
5 specialists.

6 Q. So you've never -- you've never personally -- you've
7 been present when these interviews were done?

8 A. I viewed the recordings that were created when the
9 interviews were done.

10 Q. And --

11 THE COURT: Were they video interviews?

12 THE WITNESS: Yes, they were, Your Honor.

13 THE COURT: And how many -- how many times was she
14 interviewed that you saw?

15 THE WITNESS: I've reviewed one video, and it was a
16 fairly extensive video. It was done after she was first
17 recovered.

18 THE COURT: Okay.

19 Q (BY MS. SAAD) So you have no personal interaction with
20 this victim?

21 A. Yes, I have several personal interactions with this
22 victim.

23 Q. Okay. When was that first personal interaction with
24 her?

25 A. First personal interaction was in 2011.

1 Q. Okay. Prior to 2011, were -- you testified that you
2 had been involved in the investigation of this production
3 case?

4 A. Correct.

5 Q. And prior to your first interaction with her, you had
6 conversations with other law enforcement officers about this
7 production case?

8 A. I had conversations with other law enforcement
9 officers, yes.

10 Q. You have -- you either read a report or spoke to some
11 type of outcry witness?

12 A. I don't know what you mean by "outcry witness."

13 Q. The -- the nature or the origin of this investigation
14 began through a NCMEC investigation with the National Child of
15 Missing Exploited Children (sic) with an outcry witness.
16 Could you explain how this investigation originated?

17 A. This investigation -- this investigation originated
18 from our Innocent Image and National Initiative Unit, which is
19 a nationally-based unit that has individuals embedded at the
20 National Center for Missing and Exploited Children, but the
21 FBI initiated this investigation based on images that were
22 recovered in child pornography investigations.

23 Q. Okay. So you've viewed these images that the
24 government has identified as Exhibits 43, 44 and 45, prior to
25 ever speaking with this person that you spoke to in 2011?

1 A. Yes.

2 Q. You've read reports about investigations about the
3 production of those specific investigations -- of those
4 investigations about those images?

5 A. Yes.

6 Q. You've spoken to the -- the defendant that was
7 responsible for some type of images like these, prior to
8 speaking with this person in 2011?

9 A. I have been present with the defendant, but I've
10 never had a substantive conversation with him about what he
11 did.

12 Q. You've read reports by this defendant or --

13 THE COURT: What defendant are you referring to?

14 MS. SAAD: I'll clarify, Your Honor.

15 THE COURT: The defendant who made the pornographic
16 images?

17 MS. SAAD: Yes, Your Honor.

18 THE COURT: Is that who you were referring to?

19 THE WITNESS: Yes. I've read reports of statements
20 he has made.

21 Q (BY MS. SAAD) And you read those before you met with
22 this individual in 2011?

23 A. Yes.

24 Q. And those reports admitted to taking those
25 photographs?

1 A. In those reports, he admitted producing the images,
2 yes.

3 Q. He identified where he lived?

4 A. Where he was living at the time, yes.

5 Q. He identified who was in those photographs?

6 A. Yes.

7 Q. He identified the name of that person?

8 A. Yes.

9 Q. He gave a description of her?

10 A. I don't recall him giving a specific physical
11 description, no.

12 Q. He told you her age?

13 A. He didn't tell me anything. In the reports, there
14 may have been a reference to his age -- to her age; I don't
15 recall specifically.

16 Q. You read other reports of statements by other -- let
17 me just step back. Referring to that statement --

18 *THE COURT:* Let me clarify something. I think she's
19 asking, he told you, or things like that. You never talked to
20 him, did you, or did you?

21 *THE WITNESS:* Not directly about this, the
22 substantive conduct, no.

23 *THE COURT:* You simply saw -- what you're telling us
24 you learned from him was through reports?

25 *THE WITNESS:* Correct.

1 THE COURT: That somebody else took?

2 THE WITNESS: Yes.

3 THE COURT: Okay. Go ahead. I wanted to clarify
4 that.

5 Q (BY MS. SAAD) And the defendant responsible for the
6 production of these images told you that that person --

7 THE COURT: I think he said he had never talked to
8 that defendant.

9 Is that correct?

10 THE WITNESS: He didn't tell me anything about the
11 substance of the offense directly.

12 Q (BY MS. SAAD) Let me clarify. You read reports where he
13 stated that he resided in the same house as this person?

14 A. Yes.

15 Q. Based on his statements that were included in these
16 reports, that lead to the interview with this person, correct?

17 A. No. She had been interviewed prior to any contact
18 with this individual. She is the one who actually identified
19 him as the offender.

20 Q. And so -- and so prior to meeting with her in 2011,
21 you reviewed her statements also?

22 A. As I stated, I had reviewed the video of the
23 interview with our victim specialist, the forensic interview
24 where she actually disclosed what happened to her.

25 Q. And in that, those videos, she states that that is

1 her in those images?

2 A. Yes.

3 *THE COURT:* Did you need to get that from her, or
4 could you see from looking at her that it was --

5 *THE WITNESS:* It's plain to me from looking at the
6 images that it's the same girl. But in addition to that, in a
7 recorded interview with the victim specialist in a forensic
8 interview, she disclosed that she is the individual in the
9 pictures and that she had been victimized by the individual
10 who was ultimately convicted of this crime.

11 *Q.* And Agent Wines, in -- in doing your investigation,
12 you have all the knowledge of all these reports you've read
13 and the video recordings that you've reviewed, prior to ever
14 meeting with this person, correct?

15 A. That's correct.

16 *Q.* And --

17 *THE COURT:* Ms. Saad, I think you're taking a lot of
18 time up on something that is meaningless. If he has knowledge
19 of things that are not gained from sources that would cause it
20 to be questionable, then the fact that he also gained the
21 knowledge from some other sources is irrelevant, and I think
22 that's what you're developing now, and I think that's a waste
23 of time, but go ahead if you want to continue.

24 *MS. SAAD:* Yes, Your Honor. In response to the
25 Court's concern, is our opinion is that that is -- let me

1 finish my line of questioning, and I'll address that matter.

2 THE COURT: Okay. Go ahead and finish your line of
3 questioning.

4 Q (BY MS. SAAD) Agent Wines, prior to -- you never met
5 with this victim when she was 9 years old or 10 years old?

6 THE COURT: Did you meet with her before?

7 THE WITNESS: She was not -- no. No, I didn't. She
8 was not identified until 2009.

9 THE COURT: Don't go back over things he's already
10 gone over. He's already told us when he first learned about
11 it, when he first saw the video and when he first knew about
12 her. Let's don't go back over those things.

13 Q (BY MS. SAAD) Agent Wines, you were not present when
14 those photos were taken, correct?

15 A. No, I was not.

16 THE COURT: Let's don't get into silly things. Get
17 down to some meaningful questions.

18 MS. SAAD: Yes, Your Honor.

19 Q (BY MS. SAAD) Your identification occurred five years
20 after those photos were taken?

21 THE COURT: And he's already said that.

22 MS. SAAD: Yes, Your Honor.

23 Q (BY MS. SAAD) Agent Wines, in making your identification
24 here today, you are relying on the totality of your
25 investigation in order to make this identification?

1 A. I'm primarily relying on the fact that I have
2 actually met her in person on several occasions, and I can
3 tell and I believe that it is the same girl that is depicted
4 in these images.

5 Q. And in --

6 THE COURT: I think he's answered your question.
7 Let's don't keep going around asking the same thing different
8 ways.

9 MS. SAAD: Yes. Yes, Your Honor. Permission to
10 consult with cocounsel, Your Honor?

11 THE COURT: Do what?

12 MS. SAAD: Permission to consult with cocounsel?

13 THE COURT: Yes, you can consult with cocounsel.

14 (Conferring)

15 Q (BY MS. SAAD) Based on your statement, Agent Wines, that
16 you're primarily relying on your interaction with this victim,
17 it's fair to say that you are also taking into consideration
18 all of your investigation --

19 THE COURT: Let's don't get into that again. I just
20 told you not to. Do you have any other questions you want to
21 ask?

22 Q (BY MS. SAAD) Did -- during your investigation and your
23 discussions with this person, did -- were you shown
24 photographs of this person when they were 9 or 11 years old
25 that are not these images?

1 A. Yes. I've seen hundreds of photographs of this
2 individual.

3 Q. And when viewing those images, you were told by
4 others that that is -- that was her at that time?

5 THE COURT: Did you need to know, based on what
6 somebody told you that that was her, or could you tell from
7 looking at the images?

8 THE WITNESS: Once I met her in person, I could tell
9 that she was the person in the images, regardless of what
10 anyone had told me previously.

11 THE COURT: Let's go on to something else. I think
12 you're just being redundant.

13 Okay. Can he be excused as a witness?

14 MS. SALEEM: No objections from the government.

15 THE COURT: Okay. You're excused as a witness.
16 Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 May I have the original birth certificate, sir?

19 THE COURT: Yes, I'm sorry. You want the original?

20 THE WITNESS: Yes. Thank you very much, Your Honor.

21 THE COURT: Is -- before he leaves, he's taking the
22 original of the birth certificate with him. Is there any
23 reason why that should be retained?

24 I'll ask the defendant.

25 MS. SAAD: We have no objections to the redaction of

1 the birth certificate, specifically, Your Honor.

2 *THE COURT:* Okay. Thank you.

3 *THE WITNESS:* Thank you.

4 *THE COURT:* Okay. Do you have any other evidence
5 you want to offer in support of your -- Mr. Weast's -- Wines?

6 *MS. SALEEM:* No, Your Honor, unless the Court did
7 want to review the exhibits with respect to the images that
8 were charged that the witness identified.

9 *THE COURT:* You want me to review the exhibits?

10 *MS. SALEEM:* You had inquired about that --

11 *THE COURT:* I don't need to see the exhibits.

12 *MS. SALEEM:* Then we will not offer them at this
13 time.

14 *THE COURT:* Okay. Well, I grant the motion of the
15 government to amend its exhibit list and witness list to
16 include Mr. Wines as a witness and to include the redacted
17 photograph as an exhibit.

18 Okay. There are two or three other things I wanted
19 to deal with today and that's mostly having to do with
20 instructions.

21 I have prepared the instruction that I think would
22 be appropriate to read to the jury about the defendant's
23 absence from the courtroom.

24 I'll tell you what, why don't we take about a
25 15-minute recess and let me get some things organized here

1 that I want to talk about while we're all together and while
2 the defendant's listening.

3 *COURT SECURITY OFFICER:* All rise.

4 *(Recess)*

5 *(Defendant Weast present via video conference)*

6 *COURT SECURITY OFFICER:* All rise.

7 *(Judge enters)*

8 *COURT SECURITY OFFICER:* Please be seated.

9 *THE COURT:* Okay. We're back on Number
10 4:14-CR-023-A, United States of America versus Christopher
11 Robert Weast.

12 And the attorneys are all back in the courtroom.

13 Ms. Tovar, are you and Mr. Weast in communication
14 with the court?

15 *MS. SAAD:* Your Honor, I've asked if they are, and,
16 yes, they are in communication with the court.

17 *THE COURT:* Okay. I have prepared a proposed
18 instruction to explain to -- to tell the jury not to pay any
19 attention to the fact that the defendant is not in the
20 courtroom, in so many words. I'm going to hand -- hand this
21 down. I've got a copy for each of the lawyers.

22 I'm going to read it, the proposed instruction:

23 The defendant, Christopher Robert Weast, is not
24 present in the courtroom. You are instructed that you shall
25 not speculate why he is not present, nor should you even

1 discuss that matter amongst yourselves. He will be
2 represented in the courtroom throughout the trial by his
3 attorneys.

4 Defendant's absence from the courtroom has no
5 relevance to any decision that you are to make in this case
6 and has no bearing on whether the government satisfies or has
7 satisfied its burden to establish beyond a reasonable doubt
8 the defendant's guilt of one or both of the offenses charged
9 against the defendant by the third superseding indictment in
10 this case. Therefore, you are not to consider defendant's
11 absence from the courtroom for any purpose, either for or
12 against the defendant, during your deliberations.

13 Does the government have any objection or
14 suggestions relative to that instruction?

15 *MS. SALEEM:* Your Honor, I have no objections, but
16 the thought occurs to me: Will the Court also address that
17 matter during jury selection?

18 *THE COURT:* I thought I would, during jury
19 selection, give an abbreviated thing and tell them that I
20 would be giving them more -- further instructions on that once
21 the jury is selected.

22 And the abbreviated version would be that: You'll
23 notice the defendant's not in the courtroom. You're not to
24 give any consideration to that in any way. And I'll give the
25 jury, who is actually selected, more instructions once they

1 are seated.

2 Does the defendant have any objection or suggestion?

3 *MS. SAAD:* Your Honor, we have no objections to this
4 proposed instruction. However, we want to confirm our
5 standing and running objection to his not being present in the
6 courtroom during this trial.

7 *THE COURT:* You think it would be to his advantage
8 to be in the courtroom?

9 *MS. SAAD:* No, Your Honor. We're just conveying our
10 client's objection, Your Honor.

11 *THE COURT:* Okay. Okay. That's the objection I'll
12 use -- I mean, the instruction I'll use then.

13 I have done a revised version of the agreed Charge.
14 I've made the changes we discussed during a telephone
15 conference hearing we had on the subject of the Charge, and
16 the revised version has the changes that the Court indicated
17 the Court would make during that telephone conference hearing.

18 I've added a more detailed instruction about not
19 going to social media and looking at things like that than was
20 in there. I've elaborated on that. Let's see if there's -- I
21 think that pretty well covers everything I did.

22 There's a sentence that usually shows up in the
23 charges that I'm given about no one is going to question your
24 deliberations or inquire about your deliberations. I have
25 started adding a sentence to that part of it where I

1 say -- well, here it is. Other than the -- here's the
2 sentence I've put in:

3 Other than the possibility that the Court will make
4 an inquiry into whether deliberations were conducted properly,
5 your deliberations will be secret, and you will never have to
6 explain your verdict to anyone.

7 What I add is the first part of that sentence. The
8 end part is already in there. I think those are the changes I
9 made.

10 I'm going to hand down three copies of that, one for
11 each side, and then if the defense counsel wants to give a
12 copy to Mr. Weast, there's a copy for him.

13 We use the word "actual", "actual" minor. I notice
14 the court decisions tend to use the word "real." I don't
15 think it makes any difference. I'm just making that
16 observation.

17 And I'm also -- I didn't realize this until this
18 morning when I, again, looked at the pattern jury charges,
19 that there's no -- in the Fifth Circuit Pattern Jury Charge,
20 there's no -- nothing in the proposed Charge that makes an
21 issue as to whether it's an "actual" or "real", as opposed to
22 something else, but both of you apparently have agreed that
23 the word "actual" should be in there, so we'll leave it in
24 there.

25 The only issue is if both of you agree to change

1 that to "real", we'll change it to "real" -- the word
2 "actual" -- but you don't need to decide now.

3 The forfeiture instructions and the forfeiture
4 verdict form appear to be proper. I don't have any further
5 issues on that.

6 Getting back to the instruction that I read into the
7 record, it occurred to me that at least there's a theoretical
8 possibility that the defendant would choose to testify. And
9 if he makes that choice, then -- well, my question is: Do you
10 think we need to take that into account, Ms. Saleem, in this
11 instruction? My preference would be not to. I think the
12 instruction is worded in such a way that it would not be
13 inconsistent with him testifying.

14 And I'll ask both of you: Do you think something
15 needs to be put in there that would anticipate the possibility
16 he'll testify?

17 Ms. Saleem?

18 *MS. SALEEM:* Your Honor, I've thought about that
19 possibility as well, but I don't know that there's any way for
20 us to include an instruction about the possibility of him
21 testifying --

22 *THE COURT:* Without emphasizing him not testifying.

23 *MS. SALEEM:* Exactly.

24 *THE COURT:* I'm inclined to agree with that. What's
25 your thought on that?

1 MS. SAAD: We would agree, Your Honor.

2 THE COURT: Okay. Let's see if I had anything else
3 I wanted to discuss.

4 Oh, I suspect there are persons who would find it
5 very offensive to look at the images that I suppose -- I take
6 it the government's going to be offering all of these images?

7 MS. SALEEM: Yes, Your Honor.

8 THE COURT: And is it the government's intention to
9 play the video that one of the -- that is involved in one of
10 these?

11 MS. SALEEM: Your Honor, we -- we believe we may
12 have worked it out such that we have -- we can provide a
13 laptop for the jury to take back during deliberations to
14 actually view the video.

15 We do believe that they have to view the actual
16 video, but we also did take still images in the event --

17 THE COURT: You're going to offer the video and the
18 laptop?

19 MS. SALEEM: It's a sanitized laptop, so we're not
20 actually offering the video -- I mean, excuse me. We're not
21 offering the laptop into evidence. We're going to offer the
22 video into evidence, but we'll provide a sanitized laptop for
23 the members of the jury to just put the video in when they are
24 in deliberation.

25 THE COURT: You're assuming somebody will know how

1 to work it.

2 MS. SALEEM: Well, we can provide instructions as
3 well, with the agreement of defense.

4 THE COURT: Do y'all have any disagreement with what
5 she's just described?

6 MS. SAAD: No, Your Honor. We would just assume
7 that that -- based on sanitized, that would mean not
8 accessible to the internet or any other type of outside
9 information, but I think that's -- I'm inferring that from
10 what the government is saying.

11 THE COURT: Okay. Okay. Should I say anything to
12 the jury panel about what they are going to have to be exposed
13 to during the trial to give them an opportunity to make known
14 some concerns as to whether they want to be on the jury? I've
15 never -- we haven't had one of these, so I don't know what
16 kind of problems you might run into.

17 What's your thought on that?

18 MS. SALEEM: Your Honor, I believe that you could
19 instruct them that -- that while images may be distasteful or
20 uncomfortable to them, that, just like with any other
21 evidence, they have an obligation to review it, and unless
22 they have some type of extraordinary circumstance, bias, or
23 prejudice that prevents them from participating in that, that
24 they could follow the Court's instructions.

25 THE COURT: Well, what I had in mind was telling the

1 panel that this is a case where somebody's accused of
2 possessing and receiving child pornography, and necessarily,
3 during the course of the trial, the jury will be -- child
4 pornography will be displayed to the jury, and then drop that
5 at that point, and then later on ask: Is there anything about
6 this case that would cause any of you to think it would be
7 difficult for you to participate as a juror?

8 Does that seem reasonable to approach it that way?

9 *MS. SALEEM:* Yes, Your Honor, although we would ask
10 that you would couch it in terms of, it may be difficult, but
11 is there anyone who simply -- who just could not follow your
12 instructions to observe the images or the video.

13 *THE COURT:* Well, of course, I've generally covered
14 that.

15 Okay. Is what I'm suggesting suitable to the
16 defendant?

17 *MS. SAAD:* Your Honor, we have no objection to that
18 suggestion. We would just ask, in addition, that based on --
19 if any of the jurors, after viewing these images, would be
20 able to still follow the Court's instructions that the
21 defendant is innocent until proven guilty beyond a reasonable
22 doubt.

23 The concern is that after viewing this, there's --
24 they will be unable or unwilling to listen to the evidence to
25 determine whether these elements are proven.

1 *THE COURT:* Okay. Well, let me work on it and try
2 to come up with something that would satisfy both of you that
3 would be appropriate.

4 *MS. SALEEM:* And if I may, Your Honor, that concern
5 by the defense may be alleviated if -- if we proceed in this
6 trial the way the Court normally does, with respect to the
7 images and the videos would not actually be shown to the jury
8 until deliberation.

9 *THE COURT:* Well, that's the way it normally works,
10 and if you're not going to display the video, that's the way
11 it will work in this trial.

12 Y'all want to get together between now and Monday
13 morning, or between now and late this afternoon, and try to
14 come up with something I can say to the jury that would be
15 mutually acceptable to both of you? Why don't you do that.

16 *MS. SAAD:* Yes, Your Honor.

17 *THE COURT:* Okay. Let's see if I had anything else.

18 I think that takes care of everything I have. Let
19 me interrupt a minute to ask the court reporter something.

20 (Conferring with court reporter)

21 *THE COURT:* Are the two of you going to be someplace
22 where she can deliver a copy of the testimony of McGregor, I
23 think his name is, to you tomorrow?

24 *MS. SALEEM:* Yes, Your Honor.

25 *THE COURT:* Okay. Because I do want a memorandum

1 from both of you Monday morning that would make reference to
2 things in his testimony that bear on your position, and I'll
3 try to make a decision sometime early in the day.

4 That's all I have.

5 MR. CURTIS: Your Honor, could I have an opportunity
6 to convey some of the questions that Mr. Weast conveyed to us
7 during this hearing to the Court?

8 THE COURT: If they are meaningful questions. We
9 got five or six things from him filed today --

10 MR. CURTIS: Okay.

11 THE COURT: -- that are his usual nonsense.

12 MR. CURTIS: He has objected to the jurisdiction and
13 wants the Court to -- he's asked the Court to tell him what
14 jurisdiction we're operating under. I wanted to convey that
15 to the Court.

16 THE COURT: Okay.

17 MR. CURTIS: And pretty much, it's the
18 jurisdictional argument.

19 And the name, he claims not to be Christopher Weast.

20 And also, he's advised us that he's suing the Judge
21 for \$27 million, I think is the amount, Your Honor.

22 THE COURT: Okay.

23 MR. CURTIS: Thank you.

24 THE COURT: Okay. Y'all are excused.

25 MS. SAAD: Actually, Your Honor, I apologize. It

1 occurred to me one additional concern that might come up on
2 Monday, if the Court has time?

3 *THE COURT:* Yes.

4 *MS. SAAD:* After the close of the government's case,
5 we were wanting to have an advisement to Mr. Weast about his
6 right to testify. It just -- and if he could have the
7 opportunity to either make a decision or not as to whether or
8 not he wants to testify.

9 I recognize that the jurors --

10 *THE COURT:* We'll take a recess when the government
11 rests, and that will give you an opportunity to go down and
12 talk to him, if he'll talk to you.

13 *MS. SAAD:* Thank you, Your Honor.

14 *MR. CURTIS:* Thank you, Your Honor.

15 *THE COURT:* Is that -- does that satisfy your
16 concern?

17 *MR. CURTIS:* I think so.

18 *MS. SAAD:* Yes, Your Honor.

19 *THE COURT:* Okay. Unless you want to first offer
20 other evidence, if you have other evidence you want to offer.
21 If you do, then I'll let you offer the other evidence first,
22 and then tell me when you want to take a recess.

23 *MR. CURTIS:* That would probably be the best way to
24 do it, Your Honor.

25 *THE COURT:* Okay. That's the way we'll do it, and

1 then you'll just have to tell me when you want to -- say you
2 want to approach the bench, and come up here and tell me what
3 your wish is.

4 *MS. SAAD:* Yes, Your Honor.

5 *THE COURT:* Okay. Did you offer this --

6 *COURT SECURITY OFFICER:* All rise.

7 *THE COURT:* Not quite yet.

8 Did you offer this redacted certificate as an
9 exhibit here?

10 *MS. SALEEM:* Not in -- no, not at this time.

11 *THE COURT:* Okay. Well, here it is. I'm handing it
12 back to you.

13 *MS. SALEEM:* Thank you.

14 *MR. CURTIS:* Your Honor, I do offer the pretrial
15 Exhibits 1, 2, and 3.

16 *THE COURT:* The three, they are part of the record
17 of this hearing, of this morning's hearing.

18 *MR. CURTIS:* Thank you, Your Honor.

19 *COURT SECURITY OFFICER:* All rise.

20 *(End of Proceedings)*

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REPORTER'S CERTIFICATE

I, Debra G. Saenz, CSR, RMR, CRR, certify that the foregoing is a true and correct transcript from the record of proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signed this 15th day of January, 2015.

/s/ Debra G. Saenz

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